

State Development, Natural Resources and Agricultural Industry Development Committee

From: Anne Greenaway [REDACTED]
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To: State Development, Natural Resources and Agricultural Industry Development Committee
Subject: Animal Management (Cats and Dogs) Act 2008 - Urgent Review Required
Attachments: Ethos 246 December 2017 - Dangerous Dogs.pdf; ATT00001.htm
Categories: SUBMISSION

Dear Madam

Thank you for allowing an extension of time. Unfortunately time has got away from me this week-end and I have not been able to write as comprehensive submission as I had wished. My apologies for this.

I wish to express my concern in relation to the laws relating to the regulation of dogs – particularly dogs declared Dangerous or Menacing, in Queensland.

I have practiced in the area of Animal Law for the past 8 years. Most of my work involves dealing with councils with regards to dog attack matters. I have been involved in hundreds of dog attack matters all over Australia. In NSW, all but two of my dangerous dog matters have been resolved and settled with councils. It has not been necessary to have matters litigated in court. The NSW laws (Companion Animals Act) provide for Control Orders, which can be agreed on by the dog owner and the council and orders made by the courts. A control order is an order of a court that the owner of a dog take such action (other than destroying the dog) within the period specified in the order as the court thinks necessary to prevent, or reduce the likelihood of, the dog attacking or causing injury to persons or animals.

I am based, and do most of my work, in NSW. However I was contracted by the ACT government in 2018, along with overseas experts, to review the management of dogs in the ACT. A link is available here.

<https://www.tccs.act.gov.au/city-living/pets/independent-review-into-dog-management>

The *Animal Management (Cats and Dogs) Act 2008* has a number of serious shortcomings. The rigid application of the Qld legislation is **not** making the community safer. In addition, highly responsible dog owners and dogs that are being responsibly managed are being “caught” by the Qld laws which offer no flexibility.

The rigid application of the Qld legislation has resulted in dogs of good temperament eking out the rest of their existence in a cage. It has caused immense distress to dog owners and is not making the community safer. Indeed, often a dog locked in a cage (who has previously been used to living inside with the family) will engage in behaviours which are detrimental to the neighbouring households such as crying, howling and barking.

While some QLD councils take an over-zealous approach to the legislation, other staff at Queensland councils whose staff responsible for dog attacks have told me they find the legislation restrictive and would like more discretion and flexibility when dealing with dog attack matters. I urge you to have a look at the NSW Companion Animals Act which provides for the opportunity for Control Orders to be made by the Court. I am happy to provide examples of Control Orders that have been used in NSW cases.

In addition, in the ACT, Control Orders are also an option for the Government to use when dealing with an attack.

Dog attacks are, for the most part, the responsibility of the dog owner.

In order to make the community safer I suggest some of the following

Discounted registration for desexed dogs (selling point-make all registrations somewhat expensive but a huge discount for desexed dogs)

-Widely applicable, and enforced leash laws with regulated off-leash public spaces.

-Practice of giving education and warnings to start but followed up by the big stick of strong fines for unsafe behaviour by owners.

-Progressive enforcement for dangerous behaviour by dog-such as 1st menacing (but no bite) incident relatively strong but not unreasonable, second similar offence in a specific period much heavier with conditions, maybe max of third incident in a reasonable period is OUT. Use similar progressive measures for lesser offences too; track number of incidents in time period, if hit the limit major sanctions apply.

-Serial offences attach to the OWNER, regardless of the dog. That way they can't just trade dogs. Legal mechanism to prohibit ownership of dogs by human serial offenders.

Unfortunately there are very irresponsible dog owners out there. Once a dog is involved in an attack the council often gives the owner the option of surrendering the dog. Effectively once this surrender takes place the dog becomes the property of the council and the dog is destroyed. The dog owner learns nothing. The owner is not punished and the dog pays with its life. Six months later the same person goes and acquires another dog and the cycle repeats. In many of these cases the dog is not socialised, not trained, not walked, not registered, not desexed and often not contained and allowed to roam the street (or in rural areas) the neighbouring properties, often killing livestock.

-Mandatory registered microchipping, at least of identified offender dogs, for accountability and tracking.

-Eventually work towards inter-state and inter-territory record keeping and tracking of dog owners (who have offended) and dogs to provide for uniform, or at least consistent regulation and accountability.

-Look to strengthen penalties for dog fighting and animal cruelty so both ends of the problem are attacked. Make sure government is funding dog fighting and animal cruelty investigations and prosecutions, maybe from specific fine surcharges applied to animal related offences.

The reality is that even the most docile and best trained dog can be involved in an attack if the circumstances provide for it. Accidents can happen. The law in Qld makes no distinction between an attack on a human or an attack by a dog on a chicken, cat, rabbit or guinea pig. I have had one case in NSW where a greyhound got out and killed a neighbour's duck. This dog was declared dangerous in NSW but due to the flexibility of the legislation I was able to draft a control order which was acceptable to the dog owner and also provided for community safety. This dog was never a risk to humans.

Providing flexibility (and checks and balances) in the law provides for LESS, not more, legal challenges. Councils are aware of this and will therefore conduct investigations more thoroughly and carefully.

89 Power to make declaration

(1) Any local government may, by complying with the requirements of this part—

(a) declare a particular dog to be a declared dangerous dog (a *dangerous dog declaration*); or

(b) declare a particular dog to be a declared menacing dog (a *menacing dog declaration*); or

(c) declare a particular dog to be a restricted dog (a *restricted dog declaration*).

(2) A dangerous dog declaration may be made for a dog only if the dog—

(a) has seriously attacked, or acted in a way that caused fear to, a person or another animal; or

(b) may, in the opinion of an authorised person having regard to the way the dog has behaved towards a person or another animal, seriously attack, or act in a way that causes fear to, the person or animal. This wording allows a dog to be declared dangerous if for example it walks past a cat and the cat fears the dog. Also there are no defences such as provocation for the dog owner when a dog is proposed to be declared dangerous, or declared dangerous. This approach is not making the community safer. I have actually suggested to one council that if children are holding a dog down and burning it with cigarettes then the dog could be declared dangerous and the dog owner has no defence. I have been told that there are no circumstances where a dog should attack a child.

94 Making declaration

(1) The local government must consider any written representations and evidence accompanying them within the period stated in the proposed declaration notice.

(2) If, after complying with subsection (1), the local government is satisfied that the relevant ground under section 89 still exists, it **must make the regulated dog declaration for the dog.**

Herein lies the problem. Once an “attack” has been established under section 89, the council then MUST according the legislation. In effect there is no flexibility in the act once the section 89 notice has been served. So in fact the word “proposal” is not correct, as there are no circumstances other than mistaken identity that will result in the dog not being declared dangerous or menacing. Letters from vets are not taken into account, letters from neighbours who know the dog are not taken into account, letters from people at the dog park who know the dog are not taken into account, reports from dog trainers with 20 years experience and expertise in dog temperament are not taken into account.

(3) A menacing dog declaration may be made for a dog only if a ground mentioned in subsection (2) exists for the dog, except that the attack was not serious.

(4) A restricted dog declaration may be made for a dog only if the local government is satisfied the dog is of a breed mentioned in [section 63\(1\)](#).

(5) The declaration may be made even if the dog is not in the local government's area.

(6) A declaration under this section is a *regulated dog declaration*.

(7) In this section—

seriously attack means to attack in a way causing bodily harm, grievous bodily harm or death.

canine behaviour is largely driven by the influence of the dog owner and, looking at many problem or aggressive dog incidents I believe that there are two basic ways to end up with an aggressive dog. The first is that you set out to create an aggressive dog, often not for lawful purposes and secondly and most common, the unconscious incompetent. That is someone who gets a dog without knowledge or resources to training and socialise a dog properly nor to recognise early signs that the dog is headed down a wrong path. So, it follows that if we are to change canine behaviours we must first change human behaviours around dogs.

In an effort to move beyond warnings, education and fines I suggest that Qld does what was implemented in Canada (see the Calgary Model) and created a new designation of dog which can be applied to any dog which has exhibited problem behaviours. These can be anything from barking complaints to at large too often to minor chase/threat or low level aggressive incidents. The designation is recommended by an investigating officer to the department director. The director places the (for example) nuisance designation on the animal and determines the conditions in consultation with the investigating officer, the behaviourist and anyone who he feels has a contribution. Conditions range from confinement to the owners property or leashed and possibly muzzled when off the property and most commonly, the owner will be directed to get professional assistance from a certified dog trainer to work on the dog's issues. The behaviour assessment is shared with the trainer and after one year the director reviews the dog's file and if there are no further incidents or complaints the designation is lifted and the dog's licence is reduced back to regular fee and conditions can be lifted.

This is an effective option over the other option of having the dog labelled as dangerous. That designation should be for serious offences particularly where an owner was not willing to correct their dog.

I can't say enough about the value of licensing. The licence, which would include an animal ID number, stays with the animal for life so if the animal changes owners, the record follows with him. The big advantage is that licensing is the most cost effective and humane way to empty a shelter. Lost animals are quickly reunited with owners along with some education to help prevent further offences.

Funding for Animal Services. Typically, Animal Control is the poor cousin of municipal services and are relegated to "dog catcher" instead of public safety professionals. There needs to be enough resources for intervention on animals that are showing signs of problem behaviour or owners who are not taking proper responsibility for their dog as opposed to only collecting evidence after a dog attack has occurred.

Public education, firstly on what is expected of a responsible pet owner;

1. License and provide permanent identification for your pet.
2. Desex your pet (exception here for reputable breeders and people working with a reputable breeder)
3. Provide the appropriate training, socialisation, diet, medical care, shelter and exercise for your pet.
4. Do not let your pet become a threat or nuisance in the community.

But also an awareness on what the municipal regulations are for dogs. Additionally, public education programs such as bite prevention for children and service providers (postal workers, metre readers, etc) teaching them about safety around dogs.

Properly established off-leash dog parks where owners can safely allow their dog to exercise and socialise with other dogs. These are, off course, subject to operating rules and an expectation on the owner to maintain control over their dog.

I am a firm believer that any penalty for noncompliance to regulation should be about 10 times the cost of compliance. So, if a licence for an intact dog costs \$25 and the penalty for not having a licence is \$20 – why bother?

We need to go further than just writing tickets and be more preventative. Simply writing a ticket and euthanising a dog after a serious attack does nothing to help a child who will live with a fear of dogs forever after. We need to put more resources into prevention and early intervention. Governments need to implement workable safety programs and regulations and not rely on ineffective solutions such as breed bans.

Finally the opinions of those specialising in dog behaviour need to be considered when declaring a dog dangerous or proposing to do so. The way some councils enforce the laws do not provide for any input whatsoever from those whose area of specialisation is dog behaviour. Bureaucrats ticking boxes and taking a very hard line, over-zealous approach to dog bite incidents are not making the community safer and are actually alienating good dog owners.

There is a need need for public engagement. The public need to have an opportunity to frame what they see as problems in their community and offer up some of the solutions. Responsible dog groups also need to be consulted. Unless we are willing to live in a draconian society where we are constantly charging people with offences, we need to craft laws that the public see a need for and believe they will fairly address the communities concerns. Poorly drafted and applied legislation alienates the responsible pet owner and does not effectively change the behaviours of the irresponsible. The average person in normal democratic society tends to follow the law as long as they feel they had a chance to provide their comments and they understand the how and why of the law.

The reality is, all dogs can and may bite – it's the dog owner who is responsible for a dog's actions. Let's change owner behaviour and I am certain the dog "problem" will take care of itself.

[REDACTED]

I attach an article I wrote for the ACT Law Society journal in 2017.

Feel free to contact me on [REDACTED] or [REDACTED] if I can be of further assistance.

Kind Regards

Anne Greenaway

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FEATURES . ANIMAL LAW



Dangerous dogs

A human problem

When it comes to legislating against dog attacks, the focus should be on dog owners, not dogs. It is the attitude of the owner rather than the dog's behaviour, breed, or temperament that most strongly influences whether a dog is likely to be involved in an attack.



Dog attacks in the community often evoke an emotional response from members of the public and politicians alike. For example, in Victoria in 2011, following the tragic death of Ayen Chol, the government brought forward proposed legislation with more severe restrictions on American pit bull terriers and crosses, purportedly in an attempt to lessen dog attacks in the community.

This legislation was doomed to fail from the outset, as breed-specific legislation fails to take into account the fact that any breed of dog can be dangerous in the hands of an irresponsible dog owner.

Not only has breed-specific legislation failed in every country that has introduced it, there are resource implications flowing from the introduction of such laws — for example, if animal management

agencies are required to monitor and enforce breed-based laws, those resources are diverted away from proactive responsible pet ownership strategies and animal management generally.

Victorian councils have spent hundreds of thousands of dollars defending the seizure of dogs identified as restricted breeds, in many cases unsuccessfully.¹

Who is at fault?

Every dog attack should be judged on the circumstances surrounding it, and fault can lie with any party involved in the attack. Examining the unique circumstances resulting in a dog attack is imperative in establishing who is actually at fault.²

It should also be recognised that an otherwise docile dog may bite

if placed in a fearful situation, or if tormented, teased, or otherwise provoked.

It's important not to forget that dogs, like humans, are sentient beings. They too can suffer from mental illnesses and other conditions that affect humans, for example, depression, anxiety, or epilepsy.

Lonely, anxious, and depressed

Vets have reported an increase in simple behavioural issues due to more people leaving their dogs unattended while they work long hours.³ Dogs are not naturally a solitary animal, yet people will leave them alone for 12 hours a day, and then seem surprised that their dog ends up with problems.

Vets are prescribing medications for dogs to help them with anxiety and depression.

Other animal professionals, such as animal behaviourist and trainer Liarne Henry, believe that dogs behave badly after being left alone for long periods, and that bigger dogs, including working dogs, suffer the most.⁴ “I have seen dogs put on medication for separation anxiety when really all the dog suffered from was boredom as they didn’t get any mental stimulation and hardly any exercise,” Ms Henry said.

Some animal behaviourists say owners are calling for help to get their dogs off medications such as Prozac because of erratic and aggressive behaviour. Ms Henry said she had seen side effects of medication such as aggression, leading to attacks on people.⁵

The challenge for vets, vet behaviourists and professional dog trainers is to ascertain whether the dog has a problem behaviour or a behavioural disorder.

It needs to be established whether the concerning behaviour is due to the dog being in an inappropriate home, i.e. one that does not provide the stimulation and exercise needed, or whether there are other factors causing the behaviour.

There is unfortunately a growing population of dog owners who request medication because they don’t want to train their dog or put in the requisite time and effort to meet the dogs behavioural needs.

Some owners rush into purchasing a puppy without understanding the physical and emotional needs of the breed. For example, cattle dogs nip heels — that’s what they were bred to do to cattle — so if the dog is not trained and controlled by its owners this natural behaviour

can worsen, and the dog may herd children, other dogs, or anything that moves, sometimes with disastrous consequences to the dog or other humans or animals.

Human responsibility

Responsible and caring dog owners register, desex, microchip and vaccinate their dog, take them for regular walks on a lead, supervise children around them, and comply with relevant legislation, including making sure their dog is securely contained on their property.

Irresponsible dog owners, on the other hand, often do not comply with the relevant legislation and in particular, often fail to ensure their dog is securely contained on their property, thus putting the welfare of their dog as well as other animals and community members at stake.

Unfortunately for the dogs in these situations, the owner’s irresponsible attitude can ultimately result in the dog’s death. If a dog is allowed to escape and roam at will, it is often only a matter of time before the dog is involved in an incident.

A roaming dog can become the victim of an attack by other dogs or wildlife, or be injured by a motor vehicle. Or the dog may attack pets, livestock, native animals, or humans.

Legislative responses

The legislative framework for the management of dogs in the ACT is provided for in the *Domestic Animals Act 2000*.

In the ACT, a dog that attacks another animal or person may be declared dangerous, or in the case of a severe attack on a human, may

be destroyed. However in Victoria, councils have destroyed dogs for killing a cat, even when such dogs have performed well in temperament tests and showed no aggression to other dogs or humans.⁶

The ACT government takes a sensible approach to dealing with dog attacks. There is no breed-specific legislation in the ACT. Each dog is assessed on its individual behaviour and history and the circumstances of an incident.

Declared dangerous dogs

In the ACT, once there has been an attack on an animal or human, the Registrar of Domestic Animal Services has the power to declare a dog dangerous.

If a dog attacks or harasses another animal or human, the dog is impounded while an investigation takes place. The dog owner may be fined and the dog may be declared dangerous. The penalties for the keeper of a dog that attacks a person or animal causing serious injury is up to one year’s imprisonment or fines of \$15,000, or both. If a dog that has previously been declared dangerous attacks or harasses person or animal the penalties increase to five years imprisonment or \$75,000, or both.⁷

While a dog might be declared dangerous as a result of an attack causing serious injury or death (mainly to an animal), it is actually not necessary for physical contact to be made between the dog and victim for a declaration of dangerous to be made. If the dog rushes at or chases a person or animal this is known as a “rush attack” and a dog can be declared dangerous despite no injury occurring.⁸

FEATURES . ANIMAL LAW



A dog that has been trained as a guard dog or kept as a guard dog for guarding premises other than residential premises is also regarded as a dangerous dog under the legislation. Similarly, a dog declared dangerous in another State or Territory is also regarded as a dangerous dog in the ACT.

In the ACT, the keeper of a declared dangerous dog (who is usually the dog owner) must apply to the Registrar of Domestic Animal Services for a Dangerous Dog Licence. This licence must be renewed annually by the dog owner.⁹

A licence will only be granted if the Registrar is satisfied that the dog can be kept in accordance with strict conditions designed to ensure public safety. Such conditions could include that the dog be desexed, that the dog be kept in an escape proof enclosure, that signs be erected at entry and exit points to the property containing the words “Warning — Dangerous Dog”, and that the dog wear a Dangerous Dog Collar (which has diagonal yellow and red stripes) at all times. In addition, the dog must be muzzled when in a public place.¹⁰

Before issuing the licence, the Registrar must consider (among other things) the security of the premises and the likelihood of harm being caused to any member of the public or an animal.

For some NSW dog owners, including those living in rental accommodation or public housing, complying with the dangerous dog requirements is not possible (for example the building of an enclosure with a concrete floor).¹¹ Many of these dog owners also do not have the resources to legally challenge the decision of a council ranger. The ownership of a dangerous

dog cannot be transferred so the sad reality is that most people end up surrendering their dog and the dog is euthanised.

If the dog owner does not comply with the requirements for keeping a dangerous dog, the dog may be seized and later euthanised due to the dog owner’s non-compliance.

Some NSW dog owners whose dogs have been declared dangerous choose to ignore official council correspondence. Later, when dangerous dog compliance checks are conducted, the animal management officer may find non-compliance and seize the dog. Council correspondence is then issued asking the dog owner to show cause as to why the dog should not be destroyed. Unfortunately for the dog, it is often only at this critical 11th-hour juncture that the dog owner makes contact with a lawyer.

Just how easy is it for a dog to be declared dangerous?

Dogs that are otherwise friendly to humans or other dogs can be declared dangerous for killing a chicken, a duck, a guinea pig, or a rabbit.

The ease with which dogs are declared dangerous by some councils is worrying.

Equally worrying is the fact that some rangers lack skills, experience and qualifications when it comes to dog behaviour. This can lead to a dog with an otherwise friendly and non-aggressive temperament being declared dangerous.

An example of this is a greyhound being declared dangerous when it escaped its yard after a storm and killed a duck. This dog (for

the purposes of this paper he will be called "Archie") had passed a Greyhound Adoption Program temperament test and later went on to pass the Greenhound test (the test that allows greyhounds to be exempt from wearing a muzzle in NSW). In addition to these two temperament tests, a third temperament test was conducted which revealed that Archie exhibited no aggression whatsoever towards other dogs or humans. Despite this, Archie was declared dangerous by a NSW council.

The behaviour of Archie in killing the duck, whilst regrettable, could not be described as uncharacteristic of many dogs. The RSPCA's position statement on dangerous dogs states "exceptions to classifying a dog as dangerous by (this) definition should be considered where a dog instinctively attacks an animal normally considered as prey".¹⁹

A duck is considered a prey species to many dogs, and a dog "wandering off" when a gate is open would be classified as normal behaviour in a species that is socially obligate, curious and opportunistic. Archie lived without incident with other dogs of varying sizes, including a small dog.

Most dog owners do not engage lawyers to challenge decisions of councils, so these laws are rarely tested. The question is: how does surrendering, and later euthanising the dog, make the community any safer? Surrendering a dog involved in an incident does not, in the long run, protect the community – the irresponsible owner can, and often does, simply obtain another dog. A dog that will likely be treated in the same manner, with a high probability of the same outcome: another

dog surrendered and euthanised. Remember, the attitude of the owner is the major predictor of dog attacks.

Laws and Committees

Both state government and local councils tend to take a reactive rather than proactive approach when it comes to managing and preventing dog attacks in the community. The laws regulating restricted breeds, dog attacks, and declared dangerous dogs vary from state to state, and there is little consistency in the way local councils or other agencies apply the laws.

In NSW some councils have an animal management advisory committee. Such a committee may be comprised of key stakeholders such as companion animal welfare organisations, animal rescue groups, vets or dog trainers. In the opinion of the writer, all NSW councils should aim to establish Companion Animal Advisory Committees.

In Victoria councils are required by legislation to prepare and implement a Domestic Animal Management Plan (DAMP) every four years. Public submissions are also invited with regards to council DAMPs. The Plan outlines the services, programs and policies the Council has established to address the administration of the Act and the management of dog and cat issues in their community.²³

Too easy to acquire dogs

The ease with which people can obtain dogs is a major concern. Every day dogs are sourced from places such as Gumtree and Facebook *Buy Swap and Sell* pages. There is little to no proper enforcement of the sale of these dogs and puppies.

A quick search of Facebook reveals a number of pages dedicated to selling dogs, including "Pig hunting pups and started dogs for sale". It is not uncommon to see signs at the side of rural roads stating "pig dog pups for sale".

The poorly-regulated sale of puppies that are bred to kill, and who grow into powerful dogs, is a cause for concern. Unfortunately some breeds of dogs have a tendency to attract irresponsible owners.

The Calgary model

The city of Calgary in Canada has developed a number of bylaws in relation to dogs. Known as the "Calgary model", it is a successful example of education combined with punitive council bylaws focusing on the behaviour of owners rather than individual dogs.

Animal control officials outside of Canada are being inspired to use the bylaw as a model for their own animal control ordinances.²⁴

The "Calgary Model" encompasses five principles of responsible pet ownership. These are:

- provide a licence and permanent identification for your dog,
- spay or neuter your dog,
- provide training, socialisation, proper diet and medical care for your dog,
- don't allow your dog to become a threat or nuisance, and
- procure your dog ethically and from a credible source.

While other cities and provinces in Canada are banning breeds, the Calgary model promotes education programs and stronger enforcement.

